

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

RANDALL GRIFFIN (MDOC
#196968), a/k/a Randle Griffin,

NO. 5:11-cv-14876

Plaintiff,

HON. JOHN CORBETT O'MEARA

v.

MAG. STEPHANIE DAWKINS
DAVIS

LOUIS CONDON, JOSEPH
DOWNARD, and GARY
McMURTRIE,

Defendants.

Wade Fink (P78851)
Brandon Hubbard (P71085)
Francis Ortiz (P31911)
Attorneys for Plaintiff
500 Woodward Ave., Suite 400
Detroit, MI 48226
(313) 223-3500

Clifton Schneider (P70582)
Attorney for Defendants Condon,
Downard, and McMurtrie
Michigan Dep't of Attorney General
CLEE Division
P.O. Box 30217
Lansing, MI 48909
(517) 335-7021

/

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION IN
LIMINE TO PRECLUDE JURY INSTRUCTION AND
ARGUMENT RELATED TO THE CHECKMATE DOCTRINE (D/E
#101)**

Defendants Condon, Downard, and McMurtrie, by counsel,
request that the plaintiff's motion in limine to preclude jury instruction
and argument related to the checkmate doctrine (D/E #101) be denied.

Bill Schuette
Attorney General

s/Clifton Schneider
Clifton Schneider
Assistant Attorney General
Attorney for Defendants Condon,
Downard, and McMurtrie
CLEE Division
P.O. Box 30736
Lansing, MI 48909
(517) 373-6434
SchneiderC1@michigan.gov
P70582

Dated: January 9, 2017

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

RANDALL GRIFFIN (MDOC
#196968), a/k/a Randle Griffin,

NO. 5:11-cv-14876

Plaintiff,

HON. JOHN CORBETT O'MEARA

v.

MAG. STEPHANIE DAWKINS
DAVIS

LOUIS CONDON, JOSEPH
DOWNARD, and GARY
McMURTRIE,

Defendants.

Wade Fink (P78851)
Brandon Hubbard (P71085)
Francis Ortiz (P31911)
Attorneys for Plaintiff
500 Woodward Ave., Suite 400
Detroit, MI 48226
(313) 223-3500

Clifton Schneider (P70582)
Attorney for Defendants Condon,
Downard, and McMurtrie
Michigan Dep't of Attorney General
CLEE Division
P.O. Box 30217
Lansing, MI 48909
(517) 335-7021

**BRIEF IN SUPPORT OF DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE JURY
INSTRUCTION AND ARGUMENT RELATED TO THE
CHECKMATE DOCTRINE (D/E #101)**

ARGUMENT

I. The plaintiff is bound by factual findings made in his misconduct hearings.

This Court has already declined to dismiss this case on the basis of the “checkmate” doctrine. The defendants continue to assert that law in their JFPTO and wherever else possibly needed to preserve the issue.

The plaintiff’s argument regarding the law-of-the-case doctrine is not helpful to him. This Court originally found that the plaintiff WAS checkmated from pursuing his claim. [D/E #22, Page ID 217]. The Sixth Circuit did not reverse on this issue. [D/E #35]. If the law-of-the-case doctrine was applied, this claim would not go forward. The defendants continue to believe that this claim is proceeding improperly here and are merely preserving their arguments as needed. Defense counsel is unsure why this issue is being raised in a motion in limine, as the Court will decide which instructions to read to the jury at the appropriate time once presented with options from counsel. And despite the application or non-application of the “checkmate” rule, the plaintiff is still bound by the factual holdings of the hearings officers.

Published Sixth Circuit law holds that prisoners are bound by factual findings made in prison misconduct hearings. *Peterson v. Johnson, et al.*, 714 F.3d 905, 917 (6th Cir. 2013). The plaintiff is bound by the factual findings made at his hearing on the Downard ticket. In addition, although the plaintiff claims that he was assaulted by Prisoner Reed, it was actually the plaintiff who went into Reed's cell and assaulted Reed. The plaintiff received a ticket for his actions, and he is bound by the factual findings in that ticket as well. The defendants will submit such an instruction to be read to the jury.

CONCLUSION AND RELIEF REQUESTED

The defendants respectfully request that the plaintiff's motion in limine (D/E #101) be denied.

Respectfully submitted,

Bill Schuette
Attorney General

s/Clifton Schneider
Clifton Schneider
Assistant Attorney General
Attorney for Defendants Condon,
Downard, and McMurtrie
CLEE Division
P.O. Box 30736

Lansing, MI 48909
(517) 373-6434
SchneiderC1@michigan.gov
P70582

Dated: January 9, 2017

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2017, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing of the foregoing document as well as via U.S. Mail to all non-ECF participants.

s/Clifton Schneider
Clifton Schneider
Assistant Attorney General
Attorney for Defendants Condon,
Downard, and McMurtrie
CLEE Division
P.O. Box 30736
Lansing, MI 48909
(517) 373-6434
SchneiderC1@michigan.gov
P70582